

REPRESENTATIVE FOR PETITIONER:
Richard Werner, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Brian A. Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

PESHTAL, INC.,)	Petition Nos.: 89-030-16-1-4-00394-17
)	89-030-17-1-4-00285-18
Petitioner,)	
)	Parcel No.: 89-16-20-220-105.000-030
v.)	
)	County: Wayne
WAYNE COUNTY ASSESSOR,)	
)	Assessment Years: 2016 and 2017
Respondent.)	

Appeal from the Final Determination of the
Wayne County Property Tax Assessment Board of Appeals

August 24, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Peshtal challenged the subject property’s valuation for the 2016 and 2017 assessment years, but it failed to offer any probative valuation evidence for either year. We therefore find for the Assessor and leave the assessments unchanged.

PROCEDURAL HISTORY

2. Peshtal contested its 2016 and 2017 assessments by filing Form 130 petitions with the Wayne County Assessor. The Wayne County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations upholding the original assessments of \$2,055,400 and \$2,050,600 for 2016 and 2017, respectively. Peshtal timely filed Form 131 petitions with the Board for both years and opted out of our small claims procedural rules.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On June 12, 2018, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on Peshtal’s petitions. Neither he nor the Board inspected the property.
4. Richard Werner, Peshtal’s certified tax representative, and Bradley Berkemeier, a consultant for the Assessor, were sworn as witnesses.¹
5. Peshtal offered the following exhibit:

Petitioner’s Ex. 1: 2016 Property Tax Assessment Appeal Report
6. The Assessor did not offer any exhibits.
7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) a digital recording of the hearing.
8. The subject property is a hotel located at 912 Mendelson Drive in Richmond.

¹ Joseph L. Kaiser, Betty Smith-Henson, and Timothy G. Smith were also present at the hearing, but they were not sworn as witnesses.

OBJECTIONS

9. The Assessor objected to the admission of Petitioner's Exhibit 1 because Peshtal failed to exchange it before the hearing. Cusimano argued that the Assessor would be prejudiced if we did not exclude the exhibit because she had no time to review it prior to the hearing.
10. The exhibit in question is a report purporting to compute the subject property's value using the cost, assessment-comparison, sales-comparison, and the income-capitalization approaches. Werner testified that, while Peshtal offered a similar report at the PTABOA hearing, "the majority of" the report "has been changed." Specifically, he testified that the sales-comparison and income-capitalization approaches contained within the report had changed since Peshtal submitted it at the PTABOA hearing. Werner also admitted that Peshtal did not provide the amended report to the Assessor before the hearing. As a result of Werner's admission, our ALJ sustained the Assessor's objection and excluded the exhibit from the record.
11. Because Peshtal opted out of our small claims procedures, both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). This requirement allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues at a hearing. We may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the exhibit would prejudice the opposing party. 52 IAC 2-7-1(f). However, our rules allow us to waive the exchange deadlines for materials previously submitted at a PTABOA hearing. 52 IAC 2-7-1(d).
12. We find the significant differences between the report Peshtal relied on at the PTABOA hearing and the amended report it offered at our hearing produced the type of unfair surprise our exchange rule is intended to prevent. Admitting the amended report when the Assessor had no opportunity to review it would clearly prejudice the Assessor's case. We therefore adopt our ALJ's ruling sustaining the Assessor's objection and exclude Petitioner's Exhibit 1.

BURDEN OF PROOF

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).
14. Here, the Assessor asserted that Peshtal's 2016 assessment did not increase by more than 5% over the prior year. And Peshtal offered no argument that the burden should shift to the Assessor. Thus, we find the burden rests with Peshtal for the 2016 assessment. Assigning the burden of proof for 2017 depends on our determination for 2016. We will therefore address the question of who has the burden for 2017 after deciding the 2016 appeal.

PESHTAL'S CONTENTIONS

15. As discussed above, we have excluded Petitioner's Exhibit 1 from the record based on Peshtal's failure to provide it to the Assessor at least five business days before the hearing. Peshtal offered no other documentary evidence, testimony, or argument in support of reducing its 2016 and 2017 assessments.

ASSESSOR'S CONTENTIONS

16. With the exclusion of Petitioner's Exhibit 1, Peshtal failed to make a prima facie case for reducing its assessments, and the assessments for both years should therefore remain unchanged. *Cusimano argument*.

ANALYSIS

17. Indiana assesses property based on its “true tax value,” which is determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property. 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
18. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2016 and 2017, the valuation dates were January 1 of each respective year. Ind. Code § 6-1.1-2-1.5(a).
19. Here, Peshtal has the burden to prove a reduction in the 2016 assessment is warranted. But as discussed above, we excluded Peshtal’s only exhibit, the 2016 Property Tax Assessment Appeal Report. Peshtal offered no other documentary evidence, testimony, or argument. Thus, it failed to make a prima facie case supporting a reduction to its 2016 assessment.
20. Because Peshtal’s 2016 assessment remains unchanged and its 2017 assessment decreased to a value below the original 2016 assessment, Peshtal retains the burden of proof for 2017. As with 2016, Peshtal failed to offer any probative valuation evidence. Thus, Peshtal failed to make a prima facie case for reducing its 2017 assessment as well.

SUMMARY OF FINAL DETERMINATION

21. The Board finds for the Assessor and orders no change to Peshtal’s 2016 and 2017 assessments.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.